



August 23, 2002

Mr. Hugh Coleman
Assistant District Attorney
Counsel to the Sheriff
Denton County Criminal District Attorney's Office
127 North Woodrow Lane
Denton, Texas 76205

OR2002-4727

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 167449.

The Denton County Sheriff's Department (the "department"), which you represent, received two requests for information relating to the detention of two individuals. You have provided us with a copy of an "interim rule" promulgated by the Immigration and Naturalization Service ("INS") barring the release of information relating to INS detainees. You claim that this provision makes the requested information confidential. We have considered your arguments and have reviewed the submitted information. We have also considered the comments submitted by one of the requestors. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating reasons why information at issue should or should not be released).

Section 236.6 of title 8 of the Code of Federal Regulations states:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintain, provides, services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant

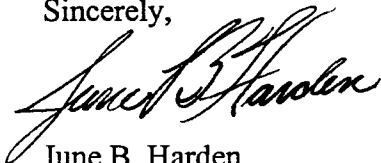
to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

67 FR 19508, April 22, 2002.

You explain that Denton County is under contract with INS to house INS inmates in its facility. You have provided a copy of this agreement for our review. You further explain that the individuals at issue are INS detainees and not county inmates. After reviewing your arguments and the appropriate statutes and case law, we agree that the department is required to abide by rules promulgated by INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (providing that commissioner of INS may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also American Civil Liberties Union of New Jersey, Inc. v. County of Hudson*, 2002 WL 1285110 (N.J.Super.A.D.) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). Consequently, the requested information is made confidential by section 236.6 and must be withheld from disclosure. *See ACLU*, 2002 WL 1285110 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 167499

Enc. Submitted documents

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